HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

WRIT PETITION No.1619 OF 2001

Between:

M. Krishna Murthy …Petitioner

AND

The Government of Andhra Pradesh,
represented by its Secretary, Department of
Home (General-A), Secretariat,
Hyderabad and two others.
...Respondents

:: O R D E R :

Counsel for the petitioner : Sri Venkata Rangadas Kanuri

Counsel for the respondents : Government Pleader for Home

18th July, 2007

In this petition, the petitioner has prayed for quashing orders dated 3-4-2000 and 12-12-2000 passed by Joint Collector, Kurnool (respondent No.3) and the State Government respectively under the Andhra Pradesh Cinemas (Regulation) Act, 1955 (for short, 'the State Act') read with the Cinematograph Act, 1952 (for short, 'the Central Act').

The petitioner's mother – Smt. Marri LaKshmamma was granted licence under Section 3 of the State Act read with the Andhra Pradesh Cinemas (Regulation) Rules, 1970 for running a cinema theatre under the name and style "Vijaya Picture Palace" at Dhone, Kurnool District. On 29-2-2000, Sub-Inspector of Police, Dhone seized a film titled "Drugs and Aids" on the premise that it was being screened by adding a reel of blue film (obscene film). Sri K. Nazeer Ahmed, the alleged leaseholder of cinema theatre and Sri D. Govindu, who is said to be operating the film were arrested and FIR No.30 of 2000 was registered against them under Section 292 read with Section 34 of the Indian Penal Code and Section 7A of the Central Act. Mandal Revenue Officer, Dhone, vide his letter dated 1-3-2000, informed respondent No.3 that the management of the theatre is in the habit of screening obscene films and recommended that action may be taken for violation of the conditions of licence. Thereupon, respondent No.3 issued notice dated 8-3-2000 to the petitioner to show cause as to why Form 'B' licence granted to the cinema theatre should not be suspended in terms of Section 10(2)(b) of the State Act. The following were the charges enumerated in the show cause notice:

"Charge-1: That the management of Vijaya Picture Palace, Dhone has leased out the cinema theatre to Sri K.Naseer Ahmed of Kurnool Town without prior permission of the Licensing Authority and allowed him to exhibit the film other than the film which is certified by the Board of Film Censors and thereby violated the Cond.(12) of Form-B Licence.

Charge-2: That the management has allowed the said unauthorized person to screen the bits of the Blue Film (obscene) by adding to the regular film titled 'Drugs and Aids' without lawful authority and tampered the film after

it has been certified and thereby contravened the provisions of Sec.7(b) of Cinematograph Act, 1952 and the Circular instructions issued by the Licensing Authority (Jt. Collector, Kurnool) in his Rc.C2/919/M/99, dt.20-4-1999."

The petitioner submitted reply dated 19-3-2000 and denied the allegation of unauthorised leasing out the cinema theatre or allowing the exhibition of films other than those certified by the Board of Film Censors. Thereafter, respondent No.3 passed order dated 3-4-2000, whereby he cancelled the licence of the cinema theatre. The appeal filed by the petitioner against order dated 3-4-2000 was dismissed by the State Government vide order dated 12-12-2000.

In the meanwhile, K. Nazeer Ahmed and D. Govindu were prosecuted in the court of Special Judicial Magistrate of I Class, Dhone, who acquitted them vide judgment dated 28-11-2000.

The petitioner has questioned the impugned orders on the ground that the same do not satisfy the requirement of a speaking order and also on the ground that in view of the judgment of acquittal passed by Special Judicial Magistrate of I Class, Dhone, he cannot be held guilty of violating the conditions of Form 'B' licence or of showing obscene film.

In the counter affidavit dated 4-7-2007 filed by him, Sri N. Nageswara Rao, Assistant Secretary to the Government, Home Department has averred that Form 'B' licence was granted in the name of Smt. Marri Lakshmamma for screening films in Vijaya Picture Palace, Dhone and that after the death of the licensee, her sons decided to execute an agreement with Sri M. Muniswamy, younger brother of the petitioner as the Managing Partner and to approach respondent No.3 to get Form 'B' licence transferred in his name. He further averred that the licence was cancelled because the theatre had been leased out without obtaining permission from the competent authority and also because obscene film was being exhibited by tampering with the approved film titled "Drugs and Aids". According to

Sri N. Nageswara Rao, the acquittal of the two accused in C.C.No.30 of 2000 is inconsequential because the court had given benefit of doubt to them and that the competent authority had rightly cancelled the licence because screening of obscene film is a grave offence which affects the youth in the society and spoils their mind.

I have heard learned counsel for the petitioner and Government Pleader for Home. Section 10(1) of the State Act empowers the licensing authority to revoke the licence if the holder thereof is convicted of an offence under Section 7 of the Central Act or Section 9 of the State Act. Sub-section (2) of Section 10 empowers the licensing authority to revoke or suspend the licence. Sub-section (4) provides for remedy of appeal. For the sake of convenience, Section 10(2), (3) and (4) of the State Act are extracted below:

"**10. Power to revoke or suspend licence:**

… … …

(2) If the licensing authority is satisfied, either on a reference made to it in this behalf or otherwise, that –

(a) a licence granted under this Act has been obtained by misrepresentation or fraud as to an essential fact, or

(b) the licensee has, without reasonable cause, failed to comply with any of the provisions of this Act or of the rules made thereunder, or any of the conditions or restrictions upon or subject to, which the licence has been granted,

and then, without prejudice to any other penalty to which the licensee may be liable under this Act, the licensing authority may, after giving the licensee an opportunity of showing cause, revoke or suspend the licence.

… … …

(3) When the licensing authority revokes or suspends any licence under sub-section (2), it shall do so by an order communicated to the licensee giving the reasons in writing for such revocation or suspension.

(4) Any person aggrieved by the decision of the licensing authority revoking or suspending a licence under sub-section (2) or imposing penalty under sub-section (2-A) may, within such time as may be prescribed appeal to the Government, and the Government may make such orders as they may think fit.

Provided that no appeal against the decision of the licensing authority under sub-section (2) shall be entertained unless the licensee deposits the

sum of penalty specified in the decision aforesaid with such authority and in such manner as may be prescribed."

A combined reading of the above reproduced provisions makes it clear that the licensing authority can either suspend or revoke the licence if the same has been obtained by misrepresentation or fraud or the licensee has, without reasonable cause, failed to comply with the provisions of the State Act or of the rules made thereunder or any of the conditions or restrictions incorporated in the licence. Sub-section (2) of Section 10 provides for giving of an opportunity of showing cause to the licensee. Sub-section (3) postulates communication of reasons for revocation or suspension of licence. It can, thus, be said that the scheme of Section 10 represents comprehensive embodiment of two facets of the natural justice i.e. audi alteram partem and speaking order.

In the present case, the petitioner has not complained of violation of the rule of audi alteram partem. Therefore, the only question which requires consideration is whether order dated 3-4-2000 passed by respondent No.3 satisfies the requirement of a speaking order. If answer to this question is in negative, then I may have to consider whether this defect can be said to have been remedied by the order of the appellate authority.

A reading of show cause notice dated 8-3-2000 and order dated 3-4-2000 reveals that respondent No.3 had called upon the petitioner to show cause against the proposed suspension of licence in terms of Section 10(2)(b) of the State Act, but in the final order, he cancelled the licence. The respondents have neither pleaded nor any material has been produced before the Court to show that before cancelling the licence, respondent No.3 issued notice to the petitioner proposing to take such action. Another noticeable feature of order dated 3-4-2000 is that while the charges enumerated in the show cause did not accuse the petitioner of being habitual of exhibiting obscene films, the cancellation of licence is founded on the

premise that the management is in the habit of exhibiting obscene films in spite of repeated instructions. It is, thus, evident that the petitioner was condemned on the basis of allegations which did not form basis of the show cause notice. Another serious defect in the order of cancellation is that even though it runs into three full-scaped pages, there is no indication of application of mind by the officer concerned to the explanation of the petitioner. The first paragraph of that order makes a mention of the seizure of film by Sub-Inspector of Police, Dhone on the ground that the exhibitor had added a reel of blue film. It also contains a mention about the alleged regular exhibition of obscene films in the theatre despite repeated instructions to the contrary and the recommendations made by the Mandal Revenue Officer for taking disciplinary action against the management. A reference has also been made to FIR registered under Section 7A of the Central Act read with Section 292, IPC at Police Station, Dhone. The next three paragraphs contain reproduction of charges, make mention of the show cause notice and the explanation given by the petitioner. The next two paragraphs contain reference to the pleas of the petitioner. The concluding paragraph speaks of cancellation of the licence. For the sake of reference, the last three paragraphs of order dated 3-4-2000 are extracted below:

"Sri M. Krishna Murthy has stated that their mother distributed the properties among her sons during her lifetime and all of his brothers have decided to execute an agreement deed for the purpose of looking after the Cinema Theatre and to keep his brother by name Sri M. Muni Swamy (2nd brother), as the Managing Partner. He has stated that they will approach the Joint Collector with a request to transfer the Form-B Licence from his mother's name to his brother who will be kept as Managing Partner. He also stated that he is not aware of the things that were taken place in the Cinema Theatre on 29-2-2000 and as such he is not at all responsible for the omissions and as such he is not at all responsible for the omissions and commissions of Sri Nazeer Ahemd and the seizure of films by the police is no way concerning to him.

Finally, Sri M. Krishna Murthy has requested the Joint Collector to

excuse him for the events that led to the issue of the show cause notice and to allow him to run the Cinema Theatre in the interest of the poor weakers who lost their livelihood by closure of the theatre besides heavy financial loss they sustained all these days.

As the charges are of serious nature and the management is in the habit of exhibiting obscene films, in spite of repeated instructions, the Form-B licence of Vijaya Picture Palace, Dhone town is hereby cancelled with immediate effect for the offences committed by the management as per the powers conferred in Section 10(2)(b) of the A.P. Cinemas (R) Act, 1955."

The appellate order passed by the State Government consists of eight paragraphs. The first six paragraphs contain enumeration of facts and the order passed by respondent No.3. In the seventh paragraph, the State Government has recorded its conclusion in the following words:

"7. Government have examined the case in the light of the Collector's report and records and keeping in view the Andhra Pradesh Cinemas (Regulation) Act, 1955, and rules made thereunder. The charge in the instant case, namely exhibition of obscene film reels is very serious and hence government see no reason to interfere with the proceedings of the Joint Collector and Licensing Authority, Kurnool District, dated 3-4-2000. Hence, the appeal petition filed by the Managing Partner, Vijaya Picture Palace, Dhone (M&V), Kurnool District is hereby rejected."

In my opinion, order dated 3-4-2000 does not satisfy the requirement of a speaking order, which necessarily postulates application of mind by the quasi-judicial authority. Respondent No.3 incorporated the facts on the basis of which action was initiated against the petitioner and cancelled the licence without dealing with the explanation given by him. The order does not even use the stock phrase "not satisfactory", which is usually found in the orders of the executive authorities entrusted with quasi-judicial functions. The non-application of mind by respondent No.3 is also demonstrated by the fact that while the show cause notice was for suspension of licence, the officer concerned proceeded to cancel the licence. There cannot be any doubt that suspension of licence and cancellation thereof are two different concepts. In the first case, the licence can be revived, but

in the second case, the only remedy available to the aggrieved person is to either file appeal or seek intervention of the Court. Therefore, without issuing notice to the petitioner proposing cancellation of the licence, respondent No.3 could not have passed order dated 3-4-2000.

The necessity of recording reasons by the quasi-judicial and even administrative authorities and communication thereof to the affected person has been highlighted in several judgments of the Supreme Court including **Harinagar Sugar Mills v. Shyam Sundar**[1], **M.P.Industries Limited v. Union of India**[2], **Bhagat Raja v. Union of India**[3], **Mahavir Prasad Santoshkumar v. State of U.P.**[4], **Travancore Rayons v. UOI**[5], **Messrs Ajanta Industries v. Central Board of Direct Taxes, New Delhi**[6], **Messrs Siemens Engineering & Manufacturing Company v. Union of India**[7], **S.N. Mukherjee v. Union of India**[8], **Charan Singh v. Healing Touch Hospital**[9] **State of Punjab v. Bagh Singh**[10], **State of Orissa v. Dhaniram Luhar**[11], **State of Rajasthan v. Sohan Lal**[12], **Cyril Lasrado v. Juliana Maria Lasrado**[13], **Mangalore Ganesh Beedi Works v. CIT**[14] and **Manorama Sachan v. Lucknow Development Authority**[15]. In **S.N. Mukherjee v. Union of India** (supra), the Constitution Bench of the Supreme Court noticed the legal position obtaining in Australia, England, United States of America, referred to a large number of judicial precedents on the subject and laid down the following proposition:

> "… Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect as those

contained in the Administrative Procedure Act, 1946 of U. S. A. and the Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case."

In **State of Punjab v. Bagh Singh** (supra), the Supreme Court observed:

> "Reasons introduce clarity in an order. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reasons is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

In **State of Rajasthan v. Sohan Lal** (supra), the Supreme Court while dealing with the question whether the High Court was required to assign reasons for recording reasons while disposing of petitions filed under Section 378 (3) Cr.P.C. observed:

> "The hallmark of a judgment/order and exercise of judicial power by a judicial forum is to disclose the reasons for its decision and giving of reasons has been always insisted upon as one of the fundamentals of sound administration justice-delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice. … The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know of the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind. All the more so, when refusal of leave to appeal has the effect of foreclosing once and for all a scope for scrutiny of the judgment of the trial court even at the

instance and hands of the first appellate court. …"

In **Cyril Lasrado v. Juliana Maria Lasrado** (supra), the Supreme Court considered the same question and held as under:

> "… Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

In **Testeels Limited v. N.M. Desai, Conciliation Officer and another**[16], a Full Bench of the Gujarat High Court made a lucid exposition of law on the subject and we can do no better than to reproduce the relevant paragraphs of that judgment, which are as under:

> "There are two strong and cogent reasons why we must insist that every quasi-judicial order must disclose reasons in support of it. The necessity of giving reasons flows as a necessary corollary from the rule of law which constitutes one of the basic principles of our constitutional set-up. Our Constitution posits a welfare State in which every citizen must have justice—social, economic and political and in order to achieve the ideal of welfare State, the State has to perform several functions involving acts of interferences with the free and unrestricted exercise of private rights. The State is called upon to regulate and control the social and economic life of the citizen in order to establish socio-economic justice and remove the existing imbalance in the socio-economic structure. The State has, therefore, necessarily to entrust diverse functions to administrative authorities which involve making of orders and decisions and performance of acts affecting the rights of individual members of the public. In exercise of some these functions, the administrative authorities are required to act judicially. Now what is involved in a judicial process is

well settled and as pointed out by Shah J. in Jaswant Sugar Mills's case, AIR 1963 SC 677 supra, a quasi-judicial decision involves the following three elements:

(1) It is in substance a determination upon investigation of a question by the application of objective standards to facts found in the light of pre-existing legal rules;

(2) It declares rights or imposes upon parties obligations affecting their civil rights; and

(3) The investigation is subject to certain procedural attributes contemplating an opportunity of presenting its case to a party, ascertainment of facts by means of material if a dispute be on question of fact, and if the dispute be on question of law, on the presentation, of legal argument, and a decision resulting in the disposal of the matter on findings based upon those questions of law and fact.

Another reason of equal cogency which weighs with us in spelling out the necessity for giving reasons is based on the power of judicial review which is possessed by the High Court under Article 226 and the Supreme Court under Article 32. The High Court under Article 226 and the Supreme Court under Article 32 have the power to quash by certiorari a quasi-judicial order made by an administrative officer and this power of review exercisable by issue of certiorari can be effectively exercised only if the order is a speaking order and reasons are given in support of it. If no reasons are given, it would not be possible for the High Court or the Supreme Court exercising its power of judicial review to examine whether the administrative officer has made any error of law in making the order. It would be the easiest thing for an administrative officer to avoid judicial scrutiny and correction by omitting to give reasons in support of his order. The High Court and the Supreme Court would be powerless to interfere so as to keep the administrative officer within the limits of the law. The result would be that the power of judicial review would be stultified and no redress being available to the citizen, there would be insidious encouragement to arbitrariness and caprice. The power of judicial review is a necessary concomitant of the rule of law and if judicial review is to be made an effective instrument for maintenance of the rule of law, it is necessary that administrative officers discharging quasi-judicial functions must be required to give reasons in support of their orders so that they can be subject to judicial scrutiny and correction."

At the cost of repetition, I deem it appropriate to observe that

order dated 3-4-2000 does not, at all, reflect application of mind by respondent No.3 to the explanation given by the petitioner. Mere reproduction of the contents of the explanation cannot be a substitute for the requirement of recording reasons.

The appellate order too suffers from the vice of being a non-speaking order. There is not even a mention, what to say of consideration of the grounds taken by the petitioner in the memorandum of appeal.

In the result, the writ petition is allowed. Orders dated 3-4-2000 and 12-12-2000 passed by respondent No.3 and the State Government respectively are declared illegal and quashed with liberty to the competent authority to pass fresh order in accordance with law. It is expected that the officer concerned will pass a reasoned order within three months from the date of receipt of copy of this order.

G.S. SINGHVI, C.J.

18th July, 2007

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[1] AIR 1961 SC 1669
[2] AIR 1966 SC 671
[3] AIR 1967 SC 1606
[4] AIR 1970 1302
[5] AIR 1971 SC 862
[6] AIR 1976 SC 437
[7] AIR 1976 SC 1785
[8] AIR 1990 SC 1984
[9] (2000) 7 SCC 668
[10] (2004) 1 SCC 547
[11] (2004) 5 SCC 568
[12] (2004) 5 SCC 573
[13] (2004) 7 SCC 431
[14] (2005) 5 SCC 75
[15] (2005) 9 SCC 425

[16] AIR 1970 Guj. 1